WRITTEN STATEMENT OF JOHN C. KING ON BEHALF OF THE CONNECTICUT CATHOLIC PUBLIC AFFAIRS CONFERENCE IN SUPPORT OF RAISED COMMITTEE BILL NO. 6555

I am John C. King of Updike, Kelly & Spellacy, P.C. testifying on behalf of the Connecticut Catholic Public Affairs Conference in support of Raised Committee Bill No. 6555. Under current law, including the common law, Connecticut General Statutes Section 52-557n and Connecticut General Statutes Section 7-465, civil claims of sexual abuse of a minor are barred against the State of Connecticut and political subdivisions of the State of Connecticut, thereby including municipalities and boards of education. However, identical claims of sexual abuse are permitted to be brought against private entities under identical circumstances. Such claims against private and public entities are generally brought under theories of negligent supervision, negligent hiring, and the failure to have proper policies and procedures in place to prevent such alleged sexual abuse of a minor. However, the outcome of such claims are remarkably different depending upon whether the alleged sexual abuse was committed in a public or private setting.

If sexual abuse against a minor is to be substantially reduced by the taking of additional measures to identify, report and prevent such acts and if the victim of alleged sexual abuse while a minor is to obtain compensation for the abuse, civil liability for such conduct must be the same regardless of whether the conduct occurred in a public or private setting. Making a distinction without a difference is unfair and nonsensical. Raised Committee Bill No. 6555 would authorize victims of childhood sexual abuse to bring an action against the state or a political subdivision of the state, or any officer, employee or agent of the state or a political subdivision.

Attached is a summary document on the applicability of the doctrine of sovereign immunity and municipal indemnity in connection with claims of sexual abuse against a minor.

A Primer on Sovereign Immunity

Conn. Gen. Stat. § 52-557n, § 7-465 and § 10-235

General Rule: The Sovereign Is Immune. Connecticut common law has long recognized sovereign immunity. *Pope v. City of New Haven*, 99 A. 51 (Conn. 1916); *Gordon v. Bridgeport Housing Authority*, 208 Conn. 161, 544 A.2d 1185 (Conn. 1988) ("Connecticut has not abolished governmental immunity.").

Sovereign Immunity Only Allows Liability for "ministerial acts." of employees. The 1986 Tort Reform Act clarified and codified sovereign immunity. Conn. Gen. Stat. § 52-557n.

"Ministerial acts" are contrasted with "discretionary acts" and refer to a "duty which is to be performed by the political subdivision in a prescribed manner without the exercise of judgment." *Durrant v. Bd. of Educ. of the City of Hartford*, 284, Conn. 91, 96 (2007)

Negligent Supervision and Hiring is "discretionary," not "ministerial." *See, e.g., Doe v. Bd. of Educ.*, 76 Conn. App. 296 (2003)

Exceptions to Sovereign Immunity § 52-557n(a)(1)(A)-(C)

1. Negligent acts or omissions within the scope of employment or official duties, unless the employee was required to exercise judgment or discretion;
2. Negligent performance of duties from which sovereign derives a profit;
3. Acts creating or participating in a nuisance;
4. Express statutory waiver, i.e. defective roads or bridges. *E.g.* Con. Gen. Stat. § 13a-149.

Sovereign Immunity Bars Liability for "criminal, willful, or malicious conduct." Con. Gen. Stat. § 52-557n(a)(2)(A). Sexual misconduct involving minors universally found to be outside scope of employment and to be criminal or malicious, thus subject to sovereign immunity.

Not aware of any Connecticut cases where municipalities or public school boards have been found liable for sexual abuse of minors based on negligence theories.

General Rule: Limited Indemnification of Claims Based on Employee Actions. Employees are generally liable for their own tortious conduct. *See Burns v. Bd. of Educ.*, 228 Conn. 640, 645 (Conn. 1994). Public entities are protected by several Connecticut statues which provide for indemnification for employees actions only in limited circumstances. Statutory limits include:

(1) Acts subject to indemnity must "ministerial" and within duties of employment;
(2) Acts which are willful or wanton are not indemnified;
(3) Notice of intent to sue must be given within **six months** after the claim arose;
(4) Statute of limitations requiring lawsuit within **two years** after claim accrued.

See, e.g., Conn. Gen. Stat. §§ 7-465, 7-101a (municipalities); § 10-235 (school boards); § 4-165 (state officers and employees); § 19a-24 (public health employees).

Both Sovereign Immunity and Indemnification Statutes Routinely Bar Childhood Sexual Abuse Claims. *See Roe v. City of Waterbury*, 542 F.3d 31, 42 (2d Cir. 2008) (holding that pursuant to Conn. Gen. Stat. § 52-557n(a)(2)(A) governmental immunity protected the city from liability when the mayor sexual abused 2 minors); *Doe v. Petersen*, 279 Conn. 607, 903 A.2d 191 (Conn. 2006) (sovereign immunity applied to bar claim by 15 year old victim of sexual assault by town employee who attempted to report the assault to a different town employee).